

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

North Ridge Estates,
Klamath County, Oregon

Melvin L. Stewart, Mary Lou Stewart, M.
L. Stewart, Inc., and Kenneth L. Tuttle,
M.D., as Trustee of the Kenneth L. Tuttle
M.D., P.C. Employees Profit Sharing and
Pension Fund for Kenneth L. Tuttle.

Respondents

UNILATERAL ADMINISTRATIVE
ORDER FOR REMEDIAL
INVESTIGATION/FEASIBILITY STUDY

U.S. EPA Region 10

Docket No. **CERCLA-10-2005-0090**

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §9606(a)

I. INTRODUCTION AND JURISDICTION

1. This Administrative Order (“Order”) is being issued by the U.S. Environmental Protection Agency to Melvin L. Stewart, Mary Lou Stewart, M. L. Stewart, Inc., and Kenneth L. Tuttle, M.D., as Trustee of the Kenneth L. Tuttle M.D., P.C. Employees Profit Sharing and Pension Fund for Kenneth L. Tuttle (“Respondents”). The Order concerns the preparation and performance of a Remedial Investigation/Feasibility Study (“RI/FS”) as described in the attached Statement of Work (“SOW”) (Appendix A) at the North Ridge Estates site (the “Site”) in Klamath County, Oregon.

2. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a) as amended (“CERCLA”), and delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order No. 12580, January 23, 1987, 52 Fed. Reg. 2923, as amended by Executive Order No. 13016, August 30, 1996, 61 Fed. Reg. 45871, further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and further redelegated to the Director, Office of Environmental Cleanup by Regional Delegations dated February 1, 2002, and October 5, 1998, respectively.

3. In issuing this Order, the objectives of EPA are: (a) to determine the nature and extent of contamination and the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site; and (b) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants or contaminants at or from the Site.

4. The activities conducted under this Order are subject to approval by EPA. The activities under this Order shall be conducted in accordance with all applicable EPA guidances, policies, and procedures.

II. FINDINGS OF FACT

1. The Site is a portion of the former Marine Recuperational Barracks facility, located in Klamath County, Oregon, about three miles north of the city of Klamath Falls. The Marine Recuperational Barracks facility was built in 1944 by the United States Department of Defense and consisted of approximately 80 buildings. In 1946, the Navy closed the Barracks and declared them surplus.

2. The Marine Recuperational Barracks were sided with cement asbestos board and contained asbestos insulation, roofing materials, floor tiles, and other asbestos-containing materials. Heat was provided to the buildings through a series of boilers, tanks, and buried steam pipes that employed asbestos-containing insulation.

3. In 1947, the Navy conveyed the Site to the State, which used the Site as the original location for the Oregon Technical Institute. The Site reverted to the United States in 1964, when the State ceased to use it for the Oregon Technical Institute.

4. On or about February 3, 1966, Nathan Engelberg, Julius Levine, Jacob Feinstein, Morris Stark, and Jerome Kaufman (collectively, the “Engelberg group”) acquired title to the Site, later known as NRE, from the United States. The Engelberg group salvaged some of the buildings on the Site and demolished others, which resulted in the release of asbestos at the Site.

5. A Warranty Deed, dated December 21, 1977, conveyed the Site from the Engelberg group to “Melvin L. Stewart, Maurice E. Bercot, and Kenneth L. Tuttle, M.D., P.C., Employees Profit Sharing and Pension Fund for Kenneth L. Tuttle.”

6. The Site was later transferred to the MBK Partnership. MBK Partnership formed in or around 1977 with original partners including Melvin L. Stewart, Maurice E. Bercot, and Kenneth L. Tuttle, M.D., P.C., Employees Profit Sharing and Pension Fund for Kenneth L. Tuttle. On or about June 1, 1989, Maurice Bercot withdrew as a partner in MBK. Subsequently the signature of “Mary Lou Stewart” appears on a “Declaration of Easement” dated and notarized on December 15, 1993; the Declaration of Easement declares that MBK is a “partnership consisting of Melvin

L. Stewart, Mary Lou Stewart, and Kenneth L. Tuttle, M.D., P.C., Employee's Pension and Profit Sharing Plan and Trust Agreement".

7. Respondents Melvin L. Stewart, Mary Lou Stewart, Kenneth L. Tuttle, M.D. as Trustee of the Kenneth L. Tuttle M.D., P.C. Employee Pension and Profit Sharing Plan and Trust for Kenneth L. Tuttle, are individuals who own and/or have owned, and/or operate, and/or have operated the Site. In addition, Respondent MBK Partnership, formed in the State of Oregon, and Respondent M. L. Stewart, Inc., incorporated in the State of Oregon, are also owners or operators of the Site.

8. Various persons and entities, including MBK, conducted building demolition and salvage, which resulted in the release of asbestos and/or asbestos-containing material (ACM) at the Site.

9. Subdivision of the Site into residential units began in approximately 1990. Within the developed area of the Site there are now approximately 22 homes with 63 residents, including 26 children.

10. Asbestos is a fibrous habit of a family of hydrated metal silicate minerals. When disturbed by natural forces or human activity, asbestos can release microscopic fibers and more complex microscopic structures into the air, which are respirable.

11. The Site contains at least two types of asbestos, chrysotile and amphibole.

12. Potential asbestos exposure pathways at the Site primarily result from activities on soil that create dust, including, but not limited to, walking, running, bicycling, riding All Terrain Vehicles, construction activities, roto-tilling, gardening and playing in Site soils. Handling friable ACM and abrading ACM debris that is not friable, such as cement asbestos board, are also potential asbestos exposure pathways.

13. Asbestos exposure pathways, which result in the inhalation or the ingestion of asbestos fibers, can cause severe and fatal health effects, including mesothelioma, asbestosis, and lung cancers, as well as cancers of the esophagus, stomach, colon, and rectum. Risks associated with such exposures have been assessed only for the inhalation pathway; toxicity data are not currently available to assess the ingestion risk associated with asbestos.

14. On September 17, 1979, EPA Region 10 issued a Compliance Order re: Hazardous Air Pollutants, No. x79-08-14-123, against MBK. On May 21, 2003, EPA Region 10 issued an Administrative Order on Consent for Removal Action and Streamlined Risk Assessment ("Removal Order"), No. CERCLA-10-2003-0088, against Respondents. The Removal Order resulted in risk assessment reports that describe potentially unacceptable risks from potential exposures to asbestos under the activity-specific pathways described in Paragraph 12.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

1. The North Ridge Estates Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Wastes and constituents thereof disposed at the Site and identified in Section II are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).
3. The presence of hazardous substances at the Site or the past, present, or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
4. The actual or threatened release of one or more hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
5. Respondents are each a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
6. Respondents are each a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.
7. The RI/FS required by this Order is necessary to abate an imminent and substantial endangerment because of an actual or threatened release of hazardous substances from the Site and protect the public health or welfare or the environment, is in the public interest, not inconsistent with CERCLA and the NCP, and will expedite effective remedial action.

IV. NOTICE TO THE STATE

On March 15, 2005, prior to issuing this Order, EPA notified the State of Oregon Department of Environmental Quality ("DEQ") that EPA would be issuing this Order.

V. ORDER

Based on the foregoing, Respondents are hereby ordered to comply with the following provisions, including, but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

VI. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

b. "Day" shall mean a calendar day unless otherwise specified. In computing any period of time under this Order, in the event that a submission would fall on a Saturday, Sunday, or U.S. federal holiday, the period shall run until the end of the next business day.

c. "DEQ" shall mean the State of Oregon Department of Environmental Quality and any successor departments or agencies of the State of Oregon.

d. "EPA" shall mean the United States Environmental Protection Agency.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

g. "Order" shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any attachments, this Order shall control.

h. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

i. "Parties" shall mean EPA and Respondents.

j. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

k. "Respondents" shall mean Melvin L. Stewart, Mary Lou Stewart, M. L. Stewart, Inc., and Kenneth L. Tuttle, M.D., as Trustee of the Kenneth L. Tuttle M.D., P.C. Employees Profit Sharing and Pension Fund for Kenneth L. Tuttle.

l. "Section" shall mean a portion of this Order identified by a Roman numeral and includes one or more paragraphs.

m. "State" shall mean the State of Oregon.

n. "Statement of Work" or "SOW" shall mean the statement of work for implementation as set forth in Appendix A to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

o. "Site" for purposes of this Order shall mean that portion of the former United States military facility located on Old Fort Road approximately three miles north of Klamath Falls, Oregon, described and identified on Klamath County tax map 38-09-15D as southeast quarter, Sections 14 and 15, Township 38 South, Range 9 East, Willamette Meridian, depicted on the map attached as Appendix B, and now commonly known as the North Ridge Estates ("NRE") subdivision.

p. "United States" shall mean the United States of America.

q. "Work" shall mean all activities Respondents are required to perform under this Order, including any activities described in the SOW.

VII. NOTICE OF INTENT TO COMPLY

1. Respondents shall provide, not later than ten days after the Effective Date of this Order, written notice to EPA stating whether they will comply with the terms of this Order. Such notice may be faxed to the attention of Clifford J. Villa at the following fax number: (206) 553-0163. Signed original notices shall also be delivered to the following address:

Clifford J. Villa, Esq.
U.S. EPA Region 10
1200 6th Avenue, ORC-158
Seattle, WA 98101

2. Respondents' written notice shall describe, using facts that exist on or prior to the Effective Date of this Order, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondents' assertions. If Respondents do not perform the Work, EPA may seek to enforce the terms of this Order pursuant to Sections 106(b) and 107(c)(3) of CERCLA.

VIII. PARTIES BOUND

1. This Order shall apply to and be binding upon Respondents and upon their directors, officers, employees, agents, successors, and assigns. No change in the ownership, corporate status, or other control of any of the entities referenced in this Paragraph shall alter any of Respondents' responsibilities under this Order.
2. Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the Effective Date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. §9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

IX. WORK TO BE PERFORMED

1. Respondents shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.
2. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a qualified project manager the selection of which shall be subject to approval by EPA. Within 20 days after the effective date of this Order, Respondents shall notify EPA in writing of the name and qualifications of the project manager, including primary support entities and staff, proposed to be used in carrying out Work under this Order. If at any time Respondents propose to use a different project manager, Respondents shall notify EPA and shall obtain approval from EPA before the new project manager performs any Work under this Order.
3. EPA will review Respondents' selection of a project manager according to the terms of Section IX Paragraph 2 of this Order. If EPA disapproves of the selection of the project manager, Respondents shall submit to EPA within five days after receipt of EPA's disapproval of the project manager previously selected, a list of project managers, including primary support entities and staff, that would be acceptable to Respondents. EPA will thereafter provide written notice to

Respondents of the names of the project managers that are acceptable to EPA. Respondents may then select any approved project manager from that list and shall notify EPA of the name of the project manager selected within 21 days of EPA's designation of approved project managers.

4. Respondents shall conduct the RI/FS and submit deliverables as provided by the Statement of Work ("SOW"), Appendix A. All such Work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Usability in Risk Assessment" (OSWER Directive #9285.7-05) and guidances referenced therein, and guidances referenced in the SOW, as may be amended or modified by EPA. The tasks that Respondents must perform are described more fully in the SOW. The activities and deliverables identified below shall be developed as provided in the SOW, and shall be submitted to EPA as provided. All Work performed under this Order shall be in accordance with the schedules herein, and in full accordance with requirements of the SOW, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time.

5. In accordance with the schedules established in this Order or in the SOW, Respondents shall submit five copies to EPA and two copies to DEQ of all plans, reports and other deliverables required under this Order, the SOW and the RI/FS Work Plan. All plans, reports, and other deliverables will be reviewed and approved by EPA pursuant to Section XVII. Upon request by EPA or DEQ, Respondents shall submit in electronic form all portions of any plan, report or other deliverable Respondents are required to submit pursuant to provisions of this Order.

6. Scoping. EPA, in consultation with DEQ and Respondents, will determine the Site-specific objectives of the RI/FS and devise a general management approach for the Site as provided in the attached SOW. Respondents shall conduct the remainder of scoping activities as described in the attached SOW and referenced guidances. At the conclusion of the project planning phase, Respondents shall provide EPA and DEQ with the following plans, reports and other deliverables:

a. RI/FS Work Plan. Within 60 days after the Effective Date of this Order, Respondents shall submit to EPA and DEQ a complete RI/FS Work Plan. Upon its approval by EPA pursuant to Section XVII, the RI/FS Work Plan shall be incorporated into and become enforceable under this Order.

b. Sampling and Analysis Plan. Within 90 days after the Effective Date, Respondents shall submit a Sampling and Analysis Plan to EPA and DEQ. This plan shall consist of a Field Sampling Plan ("FSP") and a Quality Assurance Project Plan ("QAPP"), as described in the Statement of Work and guidances, including, without limitation, "EPA Guidance for Quality Assurance Project Plans (QA/G-5)(EPA/600/R-02/009, December 2002 or subsequently issued guidance), and "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA 240/B-01/003, March 2001 or subsequently issued guidance). Upon its approval by EPA pursuant to Section XVII, the Sampling and Analysis Plan shall be incorporated

into and become enforceable under this Order.

c. Site Health and Safety Plan. Within 30 days after the Effective Date of this Order, Respondents shall submit to EPA and DEQ a Site Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992 or subsequently issued guidance). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the RI/FS. The plan is subject to EPA approval as described under Section XVII.

7. Community Relations Plan and Technical Assistance Plan. EPA will prepare a Community Relations Plan, in accordance with EPA guidance and the NCP. As requested by EPA, Respondents shall provide information supporting EPA's community relations plan and shall participate in the preparation of such information for dissemination to the public and in public meetings, which may be held or sponsored by EPA or DEQ, to explain activities at or concerning the Site. Within 30 days of a request by EPA, Respondents shall provide EPA with a Technical Assistance Plan ("TAP") for providing and administering up to \$50,000 of Respondents' funds to be used by a qualified community group meeting the requirements of 40 C.F.R. § 35.4020, except that the requirements of 40 C.F.R. § 35.4020(a)(1) shall be considered satisfied if the group could be affected by actual or potential releases at the Site, notwithstanding that the Site is neither listed nor proposed for listing on the CERCLA National Priorities List. The TAP funding shall be used consistent with 40 C.F.R. Part 35, Subpart M, to hire independent technical advisers to review documents or provide other assistance related to Respondents' work conducted pursuant to this Order. Upon its approval by EPA pursuant to Section XVII, the TAP shall be incorporated into and become enforceable under this Order.

8. Site Characterization. Following EPA approval or modification of the RI/FS Work Plan and Sampling and Analysis Plan, Respondents shall implement the provisions of these plans to characterize the Site. Respondents shall complete Site characterization and submit all plans, reports and other deliverables in accordance with the schedules and deadlines established in this Order, the SOW, and/or the EPA-approved RI/FS Work Plan and Sampling and Analysis Plan.

9. Risk Assessments. If approved by EPA, Respondents will perform the Baseline Human Health Risk Assessment in accordance with the SOW, RI/FS Work Plan and applicable EPA guidance. If EPA determines it is necessary, Respondents will also perform an Ecological Risk Assessment, in accordance with applicable guidance and approved work plans. Collectively, the Baseline Human Health Risk Assessment and the Ecological Risk Assessment are referred to as the "Risk Assessments." The EPA guidance applicable to the Risk Assessments includes, but is not limited to, the following: "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A)," (RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A, December 1989); "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of

Superfund Risk Assessments),” (RAGS, EPA 540-R-97-033, OSWER Directive 9285.7-01D, January 1998); “Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments” (ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25, June 1997) or subsequently issued guidance.

10. Draft Remedial Investigation Report. Within 30 days after EPA’s approval of the Risk Assessments, Respondents shall submit to EPA and DEQ a Draft Remedial Investigation (“RI”) Report consistent with the SOW, RI/FS Work Plan, Sampling and Analysis Plan. The Draft RI Report shall also contain the Risk Assessments. The Draft RI Report is subject to EPA approval as described under Section XVII.

11. Treatability Studies. Respondents shall conduct treatability studies, except where Respondents can demonstrate to EPA’s satisfaction that they are not needed. The major components of the treatability studies are described in the SOW. In accordance with the schedules or deadlines established in this Order, the SOW and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA and DEQ with the following plans, reports, and other deliverables, which are subject to EPA approval as described under Section XVII:

a. Identification of Candidate Technologies Memorandum. This memorandum shall be submitted within 120 days of the Effective Date of this Order.

b. Treatability Testing Statement of Work. If EPA determines that treatability testing is required, within 30 days thereafter, Respondents shall submit a Treatability Testing Statement of Work (“TTSOW”).

c. Treatability Testing Work Plan. Within 30 days after submission of the final TTSOW, Respondents shall submit a Treatability Testing Work Plan, including a schedule Treatability Study Sampling and Analysis Plan. Within 30 days after identification of the need for a separate or revised QAPP or FSP, Respondents shall submit a Treatability Study Sampling and Analysis Plan.

d. Treatability Study Evaluation Report. Within 45 days after completion of any treatability testing, Respondents shall submit a treatability study evaluation report as provided in the Statement of Work and Work Plan.

12. Development and Screening of Alternatives. Respondents shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Work Plan. In accordance with the schedules or deadlines established in this Order, the SOW and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA and DEQ with the following deliverables, which are subject to EPA approval as described under Section XVII:

a. Memorandum on Remedial Action Objectives. The Memorandum on Remedial Action Objectives shall include remedial action objectives for Engineering Controls as well as for Institutional Controls.

b. Memorandum on Development and Screening of Alternatives. The Memorandum shall summarize the development and screening of remedial alternatives.

13. Detailed Analysis of Alternatives. Respondents shall conduct a detailed analysis of remedial alternatives, as described in the SOW and RI/FS Work Plan. In accordance with the deadlines or schedules established in this Order, the SOW and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA and DEQ with the following deliverables, which are subject to EPA approval as described under Section XVII:

a. Report on Comparative Analysis and Presentation. Within 30 days after submitting the Memorandum on Development and Screening of Remedial Alternatives, Respondents will submit a report on comparative analysis to EPA and DEQ. Within 30 days of submitting the report on comparative analysis, Respondents will present to EPA and DEQ a summary of the findings of the remedial investigation and remedial action objectives, and present the results of the nine criteria evaluation and comparative analysis, as described in the SOW.

b. Alternatives Analysis for Institutional Controls and Screening. Respondents shall submit a memorandum on the Institutional Controls identified in the Memorandum on Development and Screening of Alternatives as potential remedial actions. The Alternatives Analysis for Institutional Controls and Screening shall (1) state the objectives (i.e., what will be accomplished) for the Institutional Controls; (2) determine the specific types of Institutional Controls that can be used to meet the remedial action objectives; (3) investigate when the Institutional Controls need to be implemented and/or secured and how long they must be in place; (4) research, discuss and document any agreement with the proper entities (e.g., state, local government entities, local landowners, conservation organizations, Respondents) on exactly who will be responsible for securing, maintaining and enforcing the Institutional Controls. The Alternatives Analysis for Institutional Controls and Screening shall also evaluate the Institutional Controls identified in the Memorandum on Development and Screening of Alternatives against the nine evaluation criteria outlined in the NCP (40 C.F.R. 300.430(e)(9)(iii)) for CERCLA cleanups, including but not limited to, costs to implement, monitor and/or enforce the Institutional Controls. The Alternatives Analysis for Institutional Controls and Screening shall be submitted as an appendix to the Draft Feasibility Study Report.

14. Draft Feasibility Study Report. Within 4 months after the presentation to EPA and DEQ described in Paragraph 13(a), Respondents shall submit to EPA and DEQ a Draft Feasibility Study ("FS") Report which reflects the findings in the Risk Assessments. Respondents shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The report, as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a) by EPA, and shall document the development and analysis of remedial alternatives. Upon receipt of the Draft FS report, EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the durability, reliability and effectiveness of any proposed Institutional Controls.

15. In the event that EPA takes over some of the tasks, but not the entire RI/FS, Respondents shall incorporate and integrate information supplied by EPA into the final RI/FS report, as applicable.

16. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within any time period, nor the absence of comments, shall be construed as approval by EPA.

17. Respondents shall, no less than ten days prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's RPM of such shipment of hazardous substances within the time frame given in the SOW. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.

a. The notification shall be in writing, and shall include the following information: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of any major change in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for any phase of the Work. Respondents shall provide to EPA all information on the off-site shipments, including but not limited to, all information included in Section IX Subparagraph 17(a). Respondents shall provide the off-site shipment information as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

c. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, pursuant to 42 U.S.C. § 9621(d)(3) and the off-site rule at 40 CFR 300.440. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the rule.

X. MODIFICATION OF THE WORK PLANS

1. Modifications to any plan or schedule or the attached EPA SOW may be made in writing by the RPM or at their oral direction. If the RPM makes an oral modification, it will be memorialized in writing within two days by the RPM; provided, however, that the effective date of the modification shall be the date of the RPM's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the delegated signatory or designee of EPA Region 10.

2. If Respondents seek permission to deviate from any approved plan or schedule or SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining

the proposed modification and its basis.

3. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve the Respondents of their obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XI. ADDITIONAL RESPONSE ACTIONS

If EPA determines that additional response actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 15 days of receipt of notice from EPA that additional response actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional response actions. The plan shall conform to the applicable requirements of this Order and the SOW to this Order. Upon EPA's approval of the plan, Respondents shall implement the plan for additional response actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the RPM's authority to make oral or written modifications to any plan or schedule pursuant to Section X of this Order.

XII. FINAL REPORTS, PROPOSED PLANS, RECORD OF DECISION AND ADMINISTRATIVE RECORD

1. EPA shall be responsible for the release to the public of the final reports on the RI/FS. EPA shall be responsible for the preparation and release to the public of the proposed plan and Record of Decision in accordance with CERCLA and the NCP.
2. EPA shall provide Respondents with the final reports on the RI/FS as well as any Record of Decision.
3. EPA will determine the contents of the Administrative Record file for selection of any response action. The Administrative Record file shall include those materials cited in 40 CFR 300.810. Respondents must submit to EPA all documents concerning the Site, developed during the course of the RI/FS which must be included in the Administrative Record file pursuant to 40 CFR 300.810. EPA may require Respondents to establish a community information repository at or near the Site, to house one copy of the Administrative Record.

XIII. PROGRESS REPORTS

In addition to the deliverables set forth in this Order, Respondents shall provide to EPA monthly progress reports no later than the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall: (1) describe the actions which have been taken to comply with this Order during that month; (2) include all results of sampling and tests and all other data received by Respondents; (3) describe work planned for the next two months with schedules relating such work to the overall project schedule for the Work; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

1. All sampling and analyses performed pursuant to this Order shall conform to EPA direction and approval regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow the following documents as appropriate as guidance for QA/QC and sampling: “EPA Requirements for Quality Assurance Project Plans” (QA/R-5) (120KB)–March 2001, EPA/240/B-01/003; “Guidance on Choosing a Sampling Design for Environmental Data Collection” (G-5S) (1046KB), December 2002, EPA/240/R-02/005.
2. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall only use laboratories that have a documented quality system which complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs,” (American National Standard, January 5, 1995) and “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditations Program (NELAP) as meeting the quality system requirements.
3. Upon request by EPA, the Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. The Respondents shall notify EPA at least 15 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents’ implementation of the Work.

4. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. Section 2.20, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. Section 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

5. Respondents shall provide and/or obtain access to the Site and off-Site areas owned and/or controlled by Respondents, to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Oregon representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary.

6. If the Site or other property subject to or affected by the cleanup, or where documents required to be prepared or maintained by this Order are located, is controlled or owned in whole or in part by parties other than Respondents, Respondents will obtain, or use their best efforts to obtain, access agreements from such parties consistent with the provisions of the sample agreement attached as Appendix C. Such agreements shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondents or Respondents' authorized representatives and contractors, and such agreements shall specify that Respondents are not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any landowner not a party in civil litigation with Respondents.

7. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA in writing of its failure to obtain access. EPA may use its legal authorities to obtain access for Respondents, may perform those tasks or activities requiring access with EPA contractors, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities requiring access with EPA contractors and does not terminate the Order, Respondents shall perform all other activities not requiring such access. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. EPA reserves the right to seek cost recovery for all costs and attorney fees incurred by the United States to obtain access for Respondents.

8. Notwithstanding any provision of this Order, the United States retains all of its access authorities and rights under CERCLA and any other applicable statutes or regulations.

XV. RECORD PRESERVATION

Respondents shall preserve all records and documents in its possession that relate in any way to the Site during the conduct of Work required by this Order and for a minimum of ten years after commencement of construction of any response action. Respondents shall acquire and retain copies of all documents that relate to the site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this ten year period, Respondents shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, Respondents shall, at no cost to EPA, give EPA the documents or copies of the documents.

XVI. ENDANGERMENT AND EMERGENCY RESPONSE

1. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's RPM. If the RPM is unavailable Respondents shall notify the EPA Office of Emergency Response, Region 10 Duty Officer at (800) 424-8802 or (206) 553-1263 of the incident or Site conditions. Respondents shall take such action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan. In the event that Respondents fail to take appropriate response action as required by this Section, and EPA takes that action instead, EPA reserves the right to seek reimbursement from Respondents for all costs incurred by the United States.

2. In addition, in the event of any reportable release of a hazardous substance from the Site, Respondents shall immediately notify the Emergency Response Duty OSC at (206) 553-1263 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

3. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XVII. EPA REVIEW OF SUBMISSIONS

1. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct

Respondents to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in Subparagraphs (a) or (b) of this Paragraph.

2. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.
3. Upon receipt of a notice of disapproval pursuant to Section XVII Paragraph 1(c) of this Order or a request for a modification pursuant to Section XVII Paragraph 1(b), Respondents shall, within 15 days or such longer time as specified by EPA, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.
4. If any submission is disapproved by EPA pursuant to XVII, Paragraph 1(d) of this Order, Respondents shall be deemed to be in violation of this Order.

XVIII. COMPLIANCE WITH APPLICABLE LAWS

1. All activities by Respondents pursuant to this Order shall be performed in accordance with the requirements of all federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the NCP.
2. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, tribal, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal, state, or tribal environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan subject to EPA approval.
3. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIX. REMEDIAL PROJECT MANAGER

1. All communications, whether written or oral, from Respondents to EPA shall be directed to EPA's RPM. Respondents shall submit to EPA three copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by certified mail, return receipt requested or overnight delivery. Documents shall also be provided in electronic format.

EPA's RPM is: Alan Goodman

U.S. EPA Region 10
Oregon Operations Office
811 SW Sixth Ave., 3rd Floor
Portland, OR 97204
(503) 326-3685

2. EPA has the unreviewable right to change its RPM. If EPA changes its RPM, EPA will inform Respondents in writing of the name, address, and telephone number of the new RPM.
3. EPA's RPM shall have the authority lawfully vested in the RPM, by the National Contingency Plan (NCP), 40 C.F.R. Part 300. EPA's RPM shall have authority, consistent with the NCP, to halt any work required by this Order, and to take any necessary response action.

XX. DELAY IN PERFORMANCE

1. Any delay in performance of Work required under this Order that, in EPA's judgment, is properly justified by Respondents under the terms of this Section shall not be considered a violation of this Order. Any delay in performance of a specific task required under this Order shall not affect Respondents' obligations to fully perform all other obligations under the terms and conditions of this Order.
2. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM, as appropriate, within 48 hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five business days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. EPA may, in its sole and unreviewable discretion, grant an extension of any schedule for good cause shown. Increased costs or expenses associated with implementation of the activities called for in this Order are not a justification for any delay in performance.

XXI. ASSURANCE OF ABILITY TO COMPLETE WORK

1. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of two million five hundred thousand dollars (\$2,500,000.00), in order to secure the full and final completion of Work by Respondents and the payment of Future Response Costs to be charged by the EPA. The financial assurance required by this Paragraph shall be established and maintained in the form of a fully-funded escrow account, restricted and dedicated solely for payment of costs incurred to perform Work and to reimburse EPA for Future Response Costs under this Order.
2. The escrow account referenced in the preceding Paragraph shall be in form and substance

satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided in this Section are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurance. The obligations under this Paragraph of any Respondent subject to the jurisdiction of the United States Bankruptcy Court, District of Oregon, shall be subject to any procedural or substantive restrictions imposed by the United States Bankruptcy Court, District of Oregon, or other competent court of jurisdiction. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

3. At least seven days prior to commencing any Work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XXII. UNITED STATES NOT LIABLE

The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXIII. ENFORCEMENT AND RESERVATIONS

1. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to the Site and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in Section 107(a) of CERCLA.

2. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

3. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any other

applicable law. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

4. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

5. As provided in Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under Section 106(a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$27,500 for each day in which such violation occurs or such failure to comply continues. Moreover, under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), “[i]f any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action.”

6. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

7. If a court issues an order invalidating any provision of this Order or finds Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXIV. PAYMENT OF FUTURE RESPONSE COSTS

1. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. “Future Response Costs” shall mean all costs including, but not limited to, direct and indirect costs, that the United States incurs on or after the Effective Date in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and costs incurred pursuant to Section XIV (Access) and Section XVI (Emergency Response). On a periodic basis, EPA will send Respondents a bill requiring payment that includes a SCORPIOS report or similar cost summary certified by EPA. Payment by any subject to the jurisdiction of the United States Bankruptcy Court, District of Oregon, shall be subject to any procedural or substantive restrictions imposed by the United States Bankruptcy Court, District of Oregon, or other competent court with jurisdiction. Payment shall be made to EPA by Electronics Funds Transfer (“EFT”) in accordance with current EFT procedures to be provided to Respondents by EPA Region 10, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 10DD, and the EPA docket

number for this action.

2. The total amount to be paid by Respondents pursuant to this Section shall be deposited in the North Ridge Estates Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

3. If Respondents do not pay Future Response Costs within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance of Future Response Costs. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section. Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 1 of this Section.

4. Respondents may contest payment of any Future Response Costs under this Section if they determine that EPA has made an accounting error or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 1 of this Section. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Oregon and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs. Simultaneously with establishment of the escrow account, Respondents shall submit a written notice to EPA initiating informal dispute resolution. If EPA prevails in the dispute, within five days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in this Section. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 1 of this Section. Respondents shall be disbursed any balance of the escrow account.

XXV. OPPORTUNITY TO CONFER

1. Respondents may, before the Effective Date of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within seven days of Respondents' request for a conference.

2. The purpose and scope of the conference shall be limited to issues regarding Respondents' compliance with the Order, implementation of the Work required by this Order and Respondents' intentions with respect to compliance with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or be represented by an attorney or other representative.

3. Requests for a conference may be made by contacting Clifford J. Villa, Esq., at (206) 553-1185. Oral requests must be followed by written confirmation mailed that day to Clifford J. Villa, Esq. 1200 6th Ave., Seattle, WA 98101.

XXVI. EFFECTIVE DATE AND COMPUTATION OF TIME

This Order shall be effective 20 days after the day it is signed below by EPA, unless a conference is requested as provided herein. All times for performance of ordered activities shall be calculated from this effective date. If a conference is requested, this order shall be effective ten days after the day of the conference unless modified in writing by EPA.

So Ordered, this 15th day of March, 2005.

BY: 

Daniel D. Opalski, Director
Office of Environmental Cleanup
Region 10
U.S. Environmental Protection Agency

EFFECTIVE DATE: APRIL 4, 2005